



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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MARTHA COAKLEY
ATTORNEY GENERAL

March 12, 2007

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Mr. Martin Castles
Courtroom Clerk
The Honorable F. Dennis Saylor
United States District Court
Donohue Federal Building
595 Main Street
Worcester, Massachusetts 01608

RE: **Jose Ramirez v. Steven J. O'Brien,**
U.S.D.C. Civil Action No. 03-40281

Dear Mr. Castles:

Enclosed for filing in the above-referenced case are the respondent's exhibits attached to the opposition to the motion to amend. The following are included:

1. Docket Sheets, *Commonwealth v. Ramirez*, HDCR 01675.
2. Docket Sheets, *Commonwealth v. Ramirez*, Massachusetts Appeals Court No. 2005-P-1691.
3. *Commonwealth v. Ramirez*, 67 Mass. App. Ct. 1120, 859 N.E.2d 456 (2006).
4. Docket Sheets, *Commonwealth v. Ramirez*, FAR-15951.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Eva M. Badway".

Eva M. Badway
Assistant Attorney General
(617) 727-2200, ext 2824

Enclosures

cc: Alan D. Campbell, *Esq.*



EXHIBIT 1

**Commonwealth of Massachusetts
HAMPDEN SUPERIOR COURT
Case Summary
Criminal Docket**

Commonwealth v Ramirez, Jose

Details for Docket: HDCR1998-01675

Case Information

Docket Number:	HDCR1998-01675	Caption:	Commonwealth v Ramire Jose
Entry Date:	08/26/1998	Case Status:	Crim 1 CtRm 1
Status Date:	02/15/2007	Session:	Disposed (appeal denied)
Lead Case:	NA	Deadline Status:	
Trial Deadline:		Jury Trial:	NO

Parties Involved

6 Parties Involved in Docket: HDCR1998-01675

Party Involved:	Role:	Alias defendant name
Last Name: Lassu	First Name:	George
Address:	Address:	
City:	State:	
Zip Code:	Zip Ext:	
Telephone:		

Party Involved:	Role:	Alias defendant name
Last Name: Rodriguez	First Name:	Jose
Address:	Address:	
City:	State:	
Zip Code:	Zip Ext:	
Telephone:		

Party Involved:	Role:	Alias deft name
Last Name: Lassu	First Name:	George
Address:	Address:	

City:
Zip Code:
Telephone:

State:
Zip Ext:

Party Involved:
Last Name: Rodriguez
Address:
City:
Zip Code:
Telephone:

Role: Alias deft name
First Name: Jose
Address:
State:
Zip Ext:

Party Involved:
Last Name: Ramirez
Address:
City:
Zip Code:
Telephone:

Role: Defendant
First Name: Jose
Address:
State:
Zip Ext:

Party Involved:
Last Name: Commonwealth
Address:
City:
Zip Code:
Telephone:

Role: Plaintiff
First Name:
Address:
State:
Zip Ext:

Attorneys Involved

2 Attorneys Involved for Docket: HDCR1998-01675

Attorney Involved:
Last Name: Campbell
Address: PO Box 131
City: Brookline
Zip Code: 02446
Telephone: 617-735-8913

Firm Name:
First Name: Alan D
Address:
State: MA
Zip Ext:
Tel Ext:

Fascimile:		Representing:	Ramirez, Jose (Defendant)
Attorney Involved:		Firm Name:	HAMP02
Last Name:	Julian	First Name:	Marcia B
Address:	50 State Street	Address:	Hall of Justice
City:	Springfield	State:	MA
Zip Code:	01102	Zip Ext:	
Telephone:	413-452-1109	Tel Ext:	
Fascimile:	413-731-2432	Representing:	Commonwealth, (Plaintiff)

Calendar Events

No Calendar Events found for Docket: HDCR1998-01675.

There are currently no calendar events associated with this case.

Full Docket Entries

14 Docket Entries for Docket: HDCR1998-01675

Entry Date:	Paper No:	Docket Entry:
09/18/2003		Status at conversion to computer September 18, 2003 (see docket book for other entries)
09/18/2003		
09/18/2003	20	Appearance of Deft's Atty: Alan D Campbell (as to 98-1675 & 76 for limited purpose of screening)
09/18/2003	20	
11/04/2004		Exhibits returned to Charles Dolan (pleading #33 in 98-1676)
04/19/2005	21	Motion by Deft: New Trial Motion N.4/21/05
04/19/2005	22	Appearance of Deft's Atty: Alan D Campbell
04/20/2005	23	Appearance of Commonwealth's Atty: Marcia B Julian
09/28/2005		Motion (P#21) denied See Order this date (McDonald,J.) N. 9/30/05
09/28/2005	24	ORDER (McDonald,J.) N. 9/30/05
10/17/2005	25	NOTICE of APPEAL FILED by Jose Ramirez N.11/21/05
11/21/2005	26	Notice of assembly of record; mailed to Appeals Court per Rule 9(d)
11/30/2005	27	Notice of Entry of appeal received from the Appeals Court
02/15/2007	28	Rescript received from Appeals Court; judgment AFFIRMED

Charges

2 Charges for Docket: HDCR1998-01675

No.	Charge Description:	Indictment:	Status:
1	COCAINE, TRAFFICKING IN c94C s32E(b)	HDCR1998-01676	Guilty verdi
2	Class B Substance, distrib/manufact 2nd/subsqnt offense		Dismissed

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EXHIBIT 2

Supreme Judicial Court and Appeals Court of Massachusetts
Public Case Information[Home](#)[Bottom >](#)**Case Search**[Docket Number](#)[Involved Party](#)[Attorney Appearance](#)[Lower Court](#)[Lower Court Judge](#)**Court Calendars****Help & Site Info****Helpful Links****Privacy Policy****APPEALS COURT****Panel Cases****Case Docket****COMMONWEALTH vs. JOSE RAMIREZ**
2005-P-1691**CASE HEADER**

Case Status	Closed: Rescript issued	Status Date	02/07/2007
Nature	CRIMINAL	Entry Date	11/22/2005
Sub-Nature	Den new trial/Traffic CI-B	SJ Number	
Appellant	Defendant	Case Type	Criminal
Brief Status		Brief Due	
Panel	Cypher, Grasso, Kafker, JJ.	Argued/Submitted	11/30/2006
Citation	67 Mass. App. Ct. 1120	Decision Date	12/18/2006
Lower Court	Hampden Superior Court	TC Number	
Lower Ct Judge	C. Brian McDonald, J.	TC Entry Date	08/26/1998
FAR Number	FAR-15951	SJC Number	

ADDITIONAL INFORMATION

FAR docket number is FAR-15951.

INVOLVED PARTY**Commonwealth**

Plaintiff/Appellee

Red brief filed

1 Extension, 63 Days

Jose Ramirez

Defendant/Appellant

Blue brief & appendix filed

1 Extension, 56 Days

ATTORNEY APPEARANCEJane Davidson Montori, A.D.A.Marcia B. Julian, A.D.A.Alan D. Campbell, Esquire**DOCKET ENTRIES**

Entry Date	Paper	Entry Text
11/22/2005		Prior A.C. cases involving same parties: 1991-P-0706, 1993-P-1695, 2000-P-1754.
11/22/2005		Transcripts received: NONE
11/22/2005	#1	Entered.
11/22/2005		Notice of entry sent.
01/05/2006	#2	MOTION to extend brief & appendix due date, filed by Jose Ramirez.
01/05/2006		RE#2: Extension to 02/28/2006 granted for filing of brief of Jose Ramirez, Defendant/Appellant. *Notice to counsel.
03/01/2006	#3	SERVICE of brief & appendix for Defendant/Appellant Jose

	Ramirez.
04/03/2006 #4	MOTION to extend brief due date of Commonwealth.
04/04/2006	RE#4: Extension to 06/02/2006 granted for filing of brief of Commonwealth, Plaintiff/Appellee. *Notice.
06/02/2006 #5	SERVICE of brief for Plaintiff/Appellee Commonwealth.
10/23/2006	Placed on November non-argument list.
11/30/2006	Under consideration by Panel. (C GR KF).
12/18/2006 #6	Decision: Rule 1:28 (C GR KF). Order denying motion for new trial affirmed. *Notice. (See image on file.)
01/09/2007	Copy of FAR application of Jose Ramirez.
02/05/2007	FAR DENIED (on 02/01/07).
02/07/2007	RESCRIPT to Trial Court.

[< Top](#)

As of 02/08/2007 01:0:

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EXHIBIT 3

Westlaw.

859 N.E.2d 456

Page 1

67 Mass.App.Ct. 1120, 859 N.E.2d 456, 2006 WL 3721950 (Mass.App.Ct.)
 (Cite as: 67 Mass.App.Ct. 1120, 859 N.E.2d 456)

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Briefs and Other Related Documents
 Com. v. RamirezMass.App.Ct.,2006.NOTICE:
 THIS IS AN UNPUBLISHED OPINION.
 Appeals Court of Massachusetts.
 COMMONWEALTH,
 v.
 Jose RAMIREZ.
 No. 05-P-1691.
 Dec. 18, 2006.

MEMORANDUM AND ORDER PURSUANT TO
 RULE 1:28

*1 This is the defendant's second motion for a new trial. In *Commonwealth v. Ramirez*, 55 Mass.App.Ct. 224 (2002), we affirmed the defendant's conviction and the denial of his first new trial motion, holding that the erroneous admission of hearsay evidence (business cards and a health club receipt) was not prejudicial error. The defendant now appeals from the denial of his second motion for a new trial. He argues that the erroneous admission of this evidence violated his right to confrontation under the Sixth Amendment to the United States Constitution and that appellate counsel's failure to raise that claim in his first appeal constitutes ineffective assistance of counsel. He claims that the asserted ineffectiveness deprived him of a more favorable standard of review. We affirm.

*1 Preliminarily, we observe that the defendant's previous appellate counsel did argue that admission of the challenged evidence was error that should be reviewed under the harmless beyond a reasonable doubt standard. Indeed, in her affidavit in support of the current new trial motion, prior appellate counsel acknowledges that she argued that the error was not harmless beyond a reasonable doubt. She quibbles that she did not expressly raise the issue in Sixth Amendment terms. We fail to discern a

meaningful distinction or a failure of appellate counsel. (R. 10-11)

*1 Passing over this, we agree with the Commonwealth that in any event the defendant has not shown that he received ineffective assistance of counsel. (Commonwealth's brief 14) The defendant's *trial counsel* did not raise or preserve the objection to admission of the evidence in constitutional terms. The "harmless beyond a reasonable doubt" standard applies where a constitutional objection is properly preserved. See *Commonwealth v. Galicia*, 447 Mass. 737, 746 (2006), and cases cited. Because the defendant's constitutional objection was not preserved *at trial*, on appeal we would review only to determine whether there was a substantial risk of a miscarriage of justice. *Ibid.* Our previous determination that the erroneous admission of the challenged evidence was not prejudicial error would also necessarily establish that there was no substantial risk of a miscarriage of justice. See *Commonwealth v. Ramirez*, 55 Mass.App.Ct. at 228.^{FN1}

FN1. Even at this juncture, the defendant advances no reasoned appellate argument supporting the contention that introduction of the business cards or the health club receipt bearing the name "George Lassu" violated Sixth Amendment confrontation principles as set forth in *Crawford v. Washington*, 541 U.S. 36 (2004). See Mass.R.A.P. 16(a)(4), as amended, 367 Mass. 921 (1975) (*ipse dixit* does not rise to the level of adequate appellate argument).

*1 Accordingly, any failure of previous appellate counsel to raise the alleged error in constitutional terms did not deprive the defendant of a heightened standard of review.^{FN2}

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859 N.E.2d 456

Page 2

67 Mass.App.Ct. 1120, 859 N.E.2d 456, 2006 WL 3721950 (Mass.App.Ct.)
(Cite as: 67 Mass.App.Ct. 1120, 859 N.E.2d 456)

FN2. We note that the result would be no different under the harmless beyond a reasonable doubt standard. See *Commonwealth v. Donovan*, 58 Mass.App.Ct. 631, 642-643 (2003). Guilt depended substantially on whether the jury credited the codefendant Rodriguez's detailed testimony implicating the defendant as the "main man" or the defendant's theory that he was an innocent dupe. As detailed in the Commonwealth's brief at pages one through thirteen, the other evidence of the defendant's guilt was ample and the error was not significant enough to make plausible an inference that the result might have been different.

**1 Order denying motion for new trial affirmed.*

Mass.App.Ct.,2006.

Com. v. Ramirez

67 Mass.App.Ct. 1120, 859 N.E.2d 456, 2006 WL 3721950 (Mass.App.Ct.)

Briefs and Other Related Documents (Back to top)

- 2006 WL 1832811 (Appellate Brief) Brief for the Commonwealth (May 31, 2006)
- 2005-P-1691 (Docket) (Nov. 22, 2005)

END OF DOCUMENT

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EXHIBIT 4

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[Bottom >](#)

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[Docket Number](#)

[Involved Party](#)

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[Lower Court](#)

[Lower Court Judge](#)

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COMMONWEALTH vs. JOSE RAMIREZ
FAR-15951

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CASE HEADER

Case Status	FAR denied	Status Date	02/01/2007
Nature	Crim: drug case	Entry Date	01/09/2007
Appeals Ct Number	2005-P-1691	Opposition Date	
Appellant	Defendant	Applicant	Defendant
Citation	448 Mass. 1104	Case Type	Criminal
Full Ct Number		TC Number	
Lower Court	Hampden Superior Court	Lower Ct Judge	C. Brian McDonald, J.

INVOLVED PARTY

Commonwealth
Plaintiff/Appellee

Jose Ramirez
Defendant/Appellant

ATTORNEY APPEARANCE

Jane Davidson Montori, A.D.A.

Alan D. Campbell, Esquire

DOCKET ENTRIES

Entry Date	Paper	Entry Text
01/09/2007		Docket opened.
01/09/2007	#1	FAR APPLICATION of Jose Ramirez, filed by Alan D. Campbell, Esquire.
02/01/2007	#2	DENIAL of FAR application.

[< Top](#)

As of 03/01/2007 01:01

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